

REMARKS

Examiners Bleck and Thomas are thanked for the productive interview of May 28, 2003.

Claim 1 has been rejected under 35 U.S.C. 103 as being obvious over Gombrich '372 in view of Leigh-Spencer '802. Reconsideration is respectfully requested.

Claim 1 is drawn to a method including, inter alia, the steps of uploading, by a prescriber, prescription data defining a prescription into said carrier through an infrared interface, said prescription calling for the use of a selected medication of a selected dosage on a selected schedule, and downloading said prescription data from said carrier through said interface at said pharmacy.

Gombrich '372 does not show, suggest, or disclose a method including the step of uploading prescription data defining a prescription into said carrier through said interface. Instead, Gombrich shows a Portable Handheld Patient Terminal having the ability to read bar-coded information that may be stored in a central computer. In fact, Gombrich has no suggestion that this bar-coded information may include uploaded data in the form of a prescription calling for the use of a selected medication of a selected dosage on a selected schedule.

Instead, Gombrich suggests that prescriptions should be hand-written by prescribers, but that hospital staff should use the PHPT to print a bar code that may be affixed to the doctor's written prescription so that patient information may be paired with the information within the hospital's central computer, and this central computer info will be available to the pharmacist. See, Col 14, lines 40 - Col 15, line 10.

Additionally, Gombrich does not teach, suggest, or disclose a method including the step of downloading said prescription data from said carrier. Rather, as set forth in the above

discourse, Gombrich teaches affixing a bar-code label to each prescription, thus enabling the pharmacist to access data within the central computer from a terminal located at the pharmacy. Sec, Col. 14, lines 60 - Col 15, line 10.

Further, Gombrich does not teach suggest or disclose a method including the step of downloading said prescription data through said interface at said pharmacy, and further fails to show a method wherein uploading and downloading steps are each accomplished by a data transfer that occurs without physical contact. Instead, Gombrich shows a separate communications port 368 -- separate from the bar code reader -- having a multipin connector. Sec, Col 24, lines 19-28.

Leigh-Spencer was not proffered for any of the above-referenced limitations. Instead, the Office Action proffered Leigh-Spencer to teach the modification of Gombrich to include transferring said carrier by a patient to a pharmacy. Indeed, Leigh-Spencer neither shows nor teaches these claimed limitations that are absent from Gombrich. Instead of showing these missing elements, Leigh-Spencer in fact teaches away from a combination including the elements that are missing from Gombrich because Leigh-Spencer teaches a system wherein a pharmacist first inspects a written prescription, then programs information into the patient's carrier. See, Col. 8, lines 7-14. Thus, the Leigh-Spencer system cannot be construed to teach or suggest a combination including the uploading, by a prescriber, of prescription data.

As such, Claim 1 is allowable over Gombrich '372 and Leigh-Spencer. Claims 2-6, which further limit Claim 1, are likewise allowable for their separate, patentable limitations.

Claim 7 was rejected under 35 U.S.C. 103 as being obvious over Gombrich in view of Leigh-Spencer. Reconsideration is requested.

Claim 7 is drawn to a method for conveying a prescribed medication to a patient

including, inter alia, the step of uploading prescription data, said data being in a wholly intangible digital form, into said carrier through an interface, said prescription calling for the use of a selected medication of a selected dosage on a selected schedule. Gombrich does not show, teach, or disclose a method including such steps.

Instead of uploading data that is in a wholly intangible digital form, Gombrich shows that data must be read by a bar code that is printed on a label or a paper. Sec. Col. 14, lines 60 - Col 15, line 10.

The method set forth in claim 7 further includes, inter alia, the step of encrypting said prescription data so that said data would be indecipherable without appropriate computer decryption software. Indeed, the Gombrich patent is wholly lacking of any suggestion of encryption.

The method set forth in Claim 7 also includes the step of decrypting the prescription data to convert the data into an intelligible form. As alluded to above, Gombrich fails to mention encryption; thus, decryption is likewise neither taught nor disclosed by Gombrich.

Leigh-Spencer was not proffered to teach any of these foregoing elements that are absent from Gombrich. Indeed, Leigh-Spencer does not show any of these elements. In fact, Leigh-Spencer cannot be construed to suggest or disclose these steps because the programming of the Leigh-Spencer apparatus is done by a pharmacist when filling a prescription. (Sec. Col 8. lines 7-14). The encryption and decryption steps are wholly absent from the teachings of Leigh-Spencer. Consequently, Claim 7 is allowable over the cited art.

Claims 8-13, which further limit claim 7, are likewise allowable for their separate, patentable limitations.

Claim 14 has been re-written to incorporate the written instructions and

recommendations given by Examiner Thomas at the interview of May 28, 2003. Allowance of this claim is therefore respectfully solicited. Allowance of claims 15-19, which further limit claim 14, is also requested.

Affidavit

At the interview, the Examiner Thomas recommended that the Affidavit be amended to include specific factual allegations regarding the invention of the encryption process, as well as how the encryption related to the other elements of the invention. Pursuant to Examiner Thomas' recommendations, new affidavits adopting this advice are attached.

Additionally, the interview confirmed that, in *ex parte* prosecution of an application, corroborating evidence in the form of documents is not required, as per MPEP 715.07; and, *Ex parte Hook and Crook*, 102 USPQ 130 (Bd. Pat. App. 1953). In accord with this authority that was discussed at the interview, the affidavits will be given full credence, and the applicants will be allowed to stand on the avcments set forth therein standing alone.

A revised Affidavit of Thomas G. Stoll is annexed as Exhibit One. An Affidavit of Karl Schmidt is annexed as Exhibit Two. Each of these affidavits is incorporated into this paper by reference.

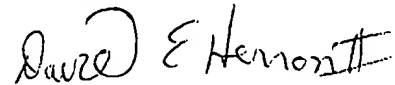
Because the Applicants' sworn testimony, standing alone, confirms that each and every claimed element was in possession of the applicants and in fact reduced to practice prior to the effective filing date of Goetz, the affidavit is not only sufficient in form, but also substantively eliminates Goetz as prior art. Additionally, the affidavit of Mr. Stoll further alleges that, in the event there are differences between the subject matter set forth in the claims and the subject matter set forth in the affidavit, then these differences – if any are found – are merely obvious variations of the claimed invention, and would have been obvious to one having ordinary skill in

the applicable art. As such, Goetz is not prior art.

The Commissioner is hereby authorized to charge any fee due necessary for the full consideration or examination of this paper to Deposit Account No. 502643. The Commissioner is further authorized to credit any overpayment made to Deposit Account No. 502643.

Respectfully Submitted,

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MCCRUMMEN, PC



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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8

I HEREBY CERTIFY that the above and foregoing Amendment, together with attachments, exhibits, affidavits, and annexes, was sent via telefacsimile to United States Patent & Trademark Office, ATTN: Carolyn M. Bleck, fax number 703-305-7687, on June 10, 2003.



David E. Herron II